IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5353 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.3997/2007 Dated 06/07/2007

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PETITIONER:

P.D. VARGHESE,
PADAPURAKKAL HOUSE, CHERANALLOOR P.O.,
MATTUMMEL, COCHIN-34.

BY ADV. SRI.N.RATHEESH
SMT.SUMA RATHEESH

RESPONDENTS:

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1. THE CIRCLE INSPECTOR OF POLICE,
TOWN NORTH POLICE STATION, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
CHERANALLOOR POLICE STATION, CHERANALLOOR,
ERNAKULAM.

3. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, ALONG WITH BA NO. 5953 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 5353 & 5953 of 2007

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Dated this the 3rd day of October, 2007

O R D E R

These applications are for anticipatory bail. The petitioners apprehend arrest in a crime registered for offences punishable, inter alia, under Sections 406 and 420 I.P.C. The crime has been registered on the basis of a private complaint filed by the husband of the first accused. He was allegedly employed abroad. He had allegedly sent amounts to his account to facilitate withdrawal by his wife/A1. She had allegedly withdrawn huge amounts.

2. The crux of the allegations is that the said amounts were misused and misappropriated by the first accused. The second accused is allegedly a person, with whom the first accused haS intimate personal relationship. The complainant/husband doubts that there is improper and illicit relationship between them. It is alleged that the second accused had abetted the first accused to misappropriate amounts. Altogether there are three petitioners. The third petitioner is the wife of the second accused. She also apprehends that false allegations may be raised against her and she may be vexed and harassed by the undeserved arrest and

incarceration. All the petitioners have come before this Court for anticipatory bail under Section 438 Cr.P.C.

3. The learned Prosecutor, at the outset, submits that the wife of the second accused, Philomina, is not arrayed as an accused and her arrest is not at all required in this crime. That submission is recorded and the prayer for anticipatory bail of the second petitioner in B.A. 5953 of 2007 can straight away be dismissed.

4. Coming to the claim for anticipatory bail of accused 1 and 2, it is alleged that the amounts withdrawn were made use of for the construction of a residential building. In the absence of the defacto complainant the building stands registered in the name of the first accused, his wife. After returning to India, he is unnecessarily raising objections against the registration of the building in the name of the first accused. He is allegedly guilty of matrimonial cruelty against the first accused. The second accused is only a neighbour of the first accused. Seeing her helpless position, the second accused and his wife had extended help, assistance etc. to the first accused. The second accused is a professional Preacher. Unable to understand and accept the relationship between the first accused on the one hand and the 2nd accused and his wife on the other, totally false allegations are being raised. The petitioners do not deserve to suffer the

undeserved trauma of arrest and detention. They are willing to co-operate with the investigation. Appropriate directions under Section 438 Cr.P.C. may be issued in favour of the petitioners, it is prayed.

5. The learned Prosecutor does not oppose the application of accused 1 and 2. I am in these circumstances satisfied that the petitioners/A1 and 2 can be granted anticipatory bail. In the absence of opposition from the learned Prosecutor, it is not necessary for me to advert to facts in any greater detail.

6. In the result:

(A) The prayer of the second petitioner in B.A. 5953 of 2007 for anticipatory bail is dismissed accepting the submissions of the learned Prosecutor that she is not required to be arrested in connection with any crime.

(B) The prayer for anticipatory bail of the first petitioner in B.A. 5953 of 2007 and the sole petitioner in 5353 of 2007 (A1 and 2 respectively) is allowed and the following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 9.10.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/-

(Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 10.10.2007 and thereafter as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 9.10.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to their surrender on 9.10.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 9.10.2007.

(R. BASANT)
Judge

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